

GINNA C. HAM  
15221 KINGS DRIVE  
ATHENS, AL 35611-5671,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

§

§

§

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 04-896

### FINAL ORDER

The Revenue Department assessed Ginna C. Ham (“Taxpayer”) for 2000 Alabama income tax. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on January 7, 2005. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Glen Powers represented the Department.

The Taxpayer failed to file a 2000 Alabama income tax return. The Department received IRS information indicating that the Taxpayer resided in Alabama and received income in 2000 sufficient to require her to file an Alabama income tax return for that year. The Department assessed the Taxpayer based on the IRS information.

The Taxpayer does not dispute that she earned the income in question or that she resided in Alabama in 2000. Rather, she questions whether the State of Alabama can impose a direct income tax on citizens of Alabama without violating the 13th Amendment’s protection against involuntary servitude. She also argues that the State cannot tax the income resulting from her labor because “the labor of a human being is not a commodity or article of commerce.” She also questions (1) whether the Administrative Law Division can address constitutional issues; (2) in what forum can she “get remedy if this administrative process can only entertain issues regarding the alleged tax due and not issues of liability”;

and (3) how can the Administrative Law Division “remain impartial having a nexus and vested interest in the decisions rendered for purposes of protecting the Order.” Taxpayer’s Appeal at 3, 4.

Alabama income tax is levied on every individual residing in Alabama. Code of Ala. 1975, §40-18-2(1). Alabama’s income tax has been found to be constitutional. *Weil v. State*, 186 So. 467 (Ala. 1939).

Every Alabama resident that has adjusted gross income of over \$1,875 in a tax year is required to file an Alabama income tax return. Code of Ala. 1975, §40-18-27(a). If an individual obligated to file an Alabama return fails to do so, the Department is authorized to calculate the individual’s liability and assess the tax due based on the most accurate and complete information obtainable. Code of Ala. 1975, §40-2A-7(b)(1)a.

In this case, the Department received IRS information indicating that the Taxpayer resided in Alabama and received over \$50,000 in non-employee compensation and interest income in 2000. She failed, however, to file a return for that year. Consequently, the Department was authorized pursuant to §40-2A-7(b)(1)a. to calculate the Taxpayer’s correct liability and assess her for the tax due, plus applicable penalties and interest. The final assessment entered by the Department is *prima facie* correct, and the burden was on the Taxpayer to prove that the final assessment is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c.

As indicated, the Taxpayer does not dispute that she earned the income in question or that she resided in Alabama in 2000. Rather, she makes various assertions that the Department has characterized as “frivolous.” I agree.

First, the Alabama income tax has nothing to do with slavery or involuntary servitude. The State is not forcing the Taxpayer to work. As a citizen of Alabama, she enjoys the benefits and services provided by the State, and is required by law to comply with Alabama's income tax statutes. Like all other citizens of Alabama, she must pay her fair share. As stated by Justice Holmes – "Taxes are what we pay for civilized society, . . ." *Compania De Tabacos v. Collector*, 275 U.S. 87 (1927).

The Taxpayer's claim that the State cannot tax the compensation resulting from her labor is also frivolous. Alabama law defines "gross income" for purposes of the Alabama income tax as all "gains . . . and income derived from salaries, wages, or compensation for personal services of whatever kind . . ." Code of Ala. 1975, §40-18-14(1). Non-employee compensation and interest income clearly fall within that definition. The taxpayers made a similar argument in *Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68 (7th Cir. 1986). The federal court rejected the taxpayers' arguments, as follows:

These are tired arguments. The code imposes a tax on all income. See 26 U.S.C. §61. Wages are income, and the tax on wages is constitutional. See among hundreds of other cases, *United States v. Thomas*, 788 F.2d 1250,1253 (7th Cir. 1986); *Lovell v. United States*, 755 F.2d 517 (7th Cir. 1984); *Granzow v. CIR*, 739 F.2d 265, 267 (7th Cir. 1984); *United States v. Koliboski*, 372 F.2d 1328, 1329 & n.1 (7th Cir. 1984). See also *Brushaber v. Union Pacific R.R.*, 240 U.S. 1, 12, 24-25, 36 S.Ct. 236, 239, 244-45, 60 L.Ed.2d 493 (1916).

*Coleman*, 791 F.2d at 70.

Concerning the Taxpayer's query as to whether the Administrative Law Division can address constitutional issues, it may apply constitutional principles, but it cannot declare a statute unconstitutional. But that query is irrelevant to whether the Taxpayer is statutorily liable for the Alabama income tax in issue. The Taxpayer's constitutional rights have not

been violated, nor is the Department prohibited by the U.S. or Alabama Constitutions from taxing the Taxpayer.

The Taxpayer next inquires where she can “get remedy” if the Administrative Law Division “can only entertain issues regarding the alleged tax due and not issues of liability.”

I do not fully understand the Taxpayer’s question because the amount of tax due is the same as her liability. In any case, the Administrative Law Division is authorized to determine a taxpayer’s liability on appeal. See, Code of Ala. 1975, §40-2A-7(b)(5)d.1. If the Taxpayer disputes her liability as established by the Administrative Law Division, her “remedy” is to appeal to the appropriate circuit court pursuant to Code of Ala. 1975, §40-2A-9(g).

Finally, concerning the Taxpayer’s claim relating to the Administrative Law Division’s impartiality, she is incorrect that the Administrative Law Division has a “nexus and vested interest” in the case. As with the over 8,500 cases previously decided by the Administrative Law Division since 1983, this case has been impartially decided based on the relevant facts and Alabama law. As indicated, if the Taxpayer disagrees with this Final Order, she may appeal to the appropriate circuit court.

The Department has also requested that the Administrative Law Division assess a frivolous appeal penalty against the Taxpayer. Code of Ala. 1975, §40-2A-11(f) levies a frivolous appeal penalty of \$250 or 25 percent of the tax in question, whichever is greater.

The federal courts have held that “a frivolous appeal is an appeal in which the result is obvious or the arguments of error are wholly without merit.” *Buck v. U.S.*, 967 F.2d 1060, 1062, citing *Montgomery v. U.S.*, 933 F.2d 348, 350 (5th Cir. 1991) (quoting *Coghlan v.*

*Starkey*, 852 F.2d 806, 811 (5th Cir. 1988).

The taxpayer in *Coleman*, *supra*, presented arguments similar in nature to the arguments presented by the Taxpayer in this case. The court upheld the frivolous appeal penalty assessed in that case with the following language:

The purpose of 26 U.S.C. §§6673 and 6702 (the federal frivolous return and appeal penalties) is to compel taxpayers to think and to conform their conduct to settled principles before they file returns and litigate. A petition to the Tax Court, or a tax return, is frivolous if it is contrary to established law and unsupported by a reasoned, colorable argument for change in the law.

\* \* \*

The inquiry is objective. If a person should have known that his position is groundless, a court may and should impose sanctions. See *Thornton v. Wahl*, 787 F.2d 1151, 1154 (7th Cir. 1986).

\* \* \*

The purpose of §§6673 and 6702, like the purpose of Rules 11 and 38 and of §1927, is to induce litigants to conform their *behavior* to the governing rules regardless of their subjective beliefs. Groundless litigation diverts the time and energies of judges from more serious claims; it imposes needless costs on other litigants. Once the legal system has resolved a claim, judges and lawyers must move on to other things. They cannot endlessly rehear stale arguments. Both appellants say that the penalties stifle their right to petition for redress of grievances. But there is no constitutional right to bring frivolous suits, see *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 743, 103 S.Ct. 2161, 2170, 76 L.Ed.2d 277 (1983). People who wish to express displeasure with taxes must chose other forums, and there are many available. Taxes are onerous, no doubt, and the size of the tax burden gives people reason to hope that they can escape payment. Self-interest calls forth obtuseness. An obtuse belief – even if sincerely held – is no refuge, no warrant for imposing delay on the legal system and costs on one's adversaries. The more costly obtuseness becomes, the less there will be.

The contentions in this case are objectively frivolous. They have been raised and rejected so often that this circuit now handles almost all similar cases by unpublished orders. The Tax Court and the IRS were entitled to impose sanctions. We, too, regularly impose sanctions in these cases.

*Coleman*, 791 F.2d at 71, 72.

The frivolous appeal penalty is also applicable in this case. The Taxpayer's arguments are facially meritless. A 25 percent frivolous appeal penalty of \$908.43 is accordingly added to the amount due.

The final assessment is affirmed. Judgment is entered against the Taxpayer for the amount of the final assessment of \$3,633.71, plus the frivolous appeal penalty of \$908.43, for a total due of \$4,542.14. Additional interest is also due on the final assessment from the date of entry of the final assessment, September 20, 2004, and on the frivolous appeal penalty from the date of this Final Order.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered January 31, 2005.

---

BILL THOMPSON  
Chief Administrative Law Judge